

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRY JAMES DAWSON,

Defendant-Appellant.

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UNPUBLISHED

October 23, 2014

No. 316787

Wayne Circuit Court

LC No. 12-010852-FC

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEMARIUS JAWAN BARGINERE,

Defendant-Appellant.

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No. 316788

Wayne Circuit Court

LC No. 12-010852-FC

Before: FITZGERALD, P.J., and WILDER and OWENS, JJ.

PER CURIAM.

In Docket No. 316787, a jury convicted defendant Terry James Dawson of two counts of second-degree murder, MCL 750.317, two counts of assault with intent to commit great bodily harm less than murder, MCL 750.84, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced Dawson to prison terms of 30 to 50 years for the second-degree murder convictions, 2 to 10 years for the assault with intent to commit great bodily harm convictions, and two years for the felony-firearm conviction.

In Docket No. 316788, a jury convicted defendant Demarius Jawan Barginere of two counts of first-degree premeditated murder, MCL 750.316(1)(a), two counts of assault with intent to murder, MCL 750.83, and felony-firearm, MCL 750.227b. The trial court sentenced Barginere to prison terms of life without the possibility of parole for the first-degree

premeditated murder convictions, 18 to 30 years for the assault with intent to murder convictions, and two years for the felony-firearm conviction. Both defendants appeal as of right.<sup>1</sup> We affirm.

Defendant Dawson argues that insufficient evidence existed for a reasonable jury to convict him of the charged offenses. Specifically, Dawson contends that there was no evidence presented to suggest that he had any knowledge that Cudaro Nelson-Johnson would use the handgun Dawson provided him to shoot at Tashana Kalka, Marcus Andrews, Courtney Smith, and Brionna Lang. Dawson argues that because he lacked the requisite intent to aid and abet Nelson-Johnson in the shooting, there was insufficient evidence to support his convictions. Further, Dawson contends that the trial court erred when it denied his motion for a directed verdict. We disagree.

In a challenge to a criminal conviction based on the sufficiency of the evidence, this Court reviews the record de novo. *People v Parker*, 288 Mich App 500, 504; 795 NW2d 596 (2010). We consider whether the evidence, taken in the light most favorable to the prosecution, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt. *Id.* We review a challenge to the trial court's ruling on a motion for a directed verdict in the same manner as a challenge regarding the sufficiency of the evidence. *Id.*

"The elements of second-degree murder are: (1) a death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification or excuse." *People v Goecke*, 457 Mich 442, 463-464; 579 NW2d 868 (1998). "Malice is defined as the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and willful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm." *Id.* at 464. The elements of assault with intent to commit great bodily harm less than murder are "(1) an attempt or threat with force or violence to do corporal harm to another (an assault), and (2) an intent to do great bodily harm less than murder." *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997). A defendant may be convicted of assault with intent to commit great bodily harm less than murder even if no actual injury occurs. *People v Dillard*, 303 Mich App 372, 378; 845 NW2d 518 (2013). Further, felony-firearm involves two elements: (1) defendant possessed a firearm, and (2) defendant possessed the firearm during the commission of a felony or an attempted felony. *People v Johnson*, 293 Mich App 79, 82-83; 808 NW2d 815 (2011).

A defendant may be convicted of a crime based on an aiding and abetting theory of criminal liability. See MCL 767.39. "Aiding and abetting" describes "any type of assistance given to the perpetrator of a crime by words or deeds that are intended to encourage, support, or incite the commission of that crime." *People v Moore*, 470 Mich 56, 63; 679 NW2d 41 (2004). To prove that a defendant aided and abetted the commission of a crime, the prosecution must establish:

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<sup>1</sup> This Court consolidated the appeals.

(1) the crime charged was committed by the defendant or some other person, (2) the defendant performed acts or gave encouragement that assisted the commission of the crime, and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time he gave aid and encouragement. [*People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).]

Regarding the intent necessary to aid and abet in the commission of a crime, our Supreme Court has stated that:

[A] defendant must possess the criminal intent to aid, abet, procure, or counsel the commission of an offense. A defendant is criminally liable for the offenses the defendant specifically intends to aid or abet, or had knowledge of, as well as those crimes that are the natural and probable consequences of the offense he intends to aid or abet. Therefore, the prosecutor must prove beyond a reasonable doubt that the defendant aided or abetted the commission of an offense and that the defendant intended to aid the charged offense, knew the principal intended to commit the offense, or alternatively, that the charged offense was a natural and probable consequence of the commission of the intended offense. [*People v Robinson*, 475 Mich 1, 15; 715 NW2d 44 (2006).]

Dawson argues that there was insufficient evidence for a reasonable jury to conclude that he possessed the intent to aid or abet Nelson-Johnson and Barginere in their attack on the Andrews's group of people. However, evidence presented at trial demonstrated that Dawson knew that the natural and probable consequence of dropping a handgun from his apartment window to Nelson-Johnson was that he would use the gun against other people. Dawson does not contest that he performed an act that assisted in the commission of Nelson-Johnson's and Barginere's offenses by providing a handgun to their group on the day of the shootings. It is unclear whether Dawson was explicitly told by a member of Nelson-Johnson's group that the plan for the handgun was to use it to attack the Andrews's group; however, Andrea Trammell did state that she remembered a phone call was placed to Dawson, as the group drove to his apartment to retrieve the gun, to let him know that the gun was needed. Taking the evidence in the light most favorable to the prosecution, Dawson was aware that Nelson-Johnson wanted the handgun quickly, and Dawson proceeded to provide him with the gun. Under the circumstances, a reasonable jury could conclude that Dawson was aware that the natural and probable consequence of providing the gun to Nelson-Johnson was that he or someone else in the group would use it to shoot other people.

Further, if Dawson was aware that Nelson-Johnson planned to use the gun against other people, the elements for aiding and abetting the commission of two counts of second-degree murder, two counts of assault with intent to commit great bodily harm less than murder, and felony-firearm were satisfied. It is uncontested that Nelson-Johnson killed Kalka and Andrews with malice and without justification. Further, it is undisputed that Nelson-Johnson committed assault with intent to commit great bodily harm less than murder against Smith and Lang by shooting at them from close range. Finally, it is uncontested that Nelson-Johnson used the handgun dropped to him by Dawson in the commission of the shootings; accordingly, the elements of felony-firearm were satisfied. Taking the evidence in the light most favorable to the prosecution, a reasonable jury could have concluded that Dawson knew that the natural and

probable consequence of his act was that Nelson-Johnson would use the gun in an attempt to kill or injure other people. Accordingly, sufficient evidence was presented for a reasonable jury to convict Dawson of the charged offenses.

Dawson also argues, in a single sentence in his brief on appeal, that the trial court erred when it denied his motion for a directed verdict at trial. The analysis for Dawson's argument is the same as for his challenge regarding the sufficiency of the evidence. *Parker*, 288 Mich App at 504. As noted, Trammell stated that Dawson was informed via phone call that Nelson-Johnson and his group needed the handgun immediately; further, Dawson proceeded to provide him with the gun when the group arrived at his apartment. Taking the evidence presented by the prosecution in the light most favorable to the prosecution, a reasonable jury could have concluded that Dawson was guilty of the charged offenses under an aiding and abetting theory. Accordingly, the trial court properly denied Dawson's motion for a directed verdict.

Defendant Barginere argues that insufficient evidence existed for a reasonable jury to convict him of his charged offenses. Specifically, Barginere contends that there was no evidence presented at trial suggesting that he knew that Nelson-Johnson planned to shoot at Andrews's group. Barginere argues that he lacked the intent to aid and abet in the shoot of Andrews's group. We disagree.

"The elements of first-degree murder are (1) the intentional killing of a human (2) with premeditation and deliberation." *People v Bennett*, 290 Mich App 465, 472; 802 NW2d 627 (2010). "The elements of assault with intent to commit murder are (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder." *People v Brown*, 267 Mich App 141, 147; 703 NW2d 230 (2005). As noted, felony-firearm involves two elements: (1) defendant possessed a firearm, and (2) defendant possessed the firearm during the commission of a felony or an attempted felony. *Johnson*, 293 Mich App at 82-83. A defendant may be convicted of a crime based on an aiding and abetting theory of criminal liability. See MCL 767.39. "Aiding and abetting" describes "any type of assistance given to the perpetrator of a crime by words or deeds that are intended to encourage, support, or incite the commission of that crime." *Moore*, 470 Mich at 63.

On appeal, Barginere argues that insufficient evidence existed for a reasonable jury to conclude that he possessed the intent to aid and abet in the charged offenses. However, Barginere was present and involved in nearly all of the events leading up to the shooting. Barginere was standing in front of his house when Andrews fired shots, and he drove Nelson-Johnson, Trammel, and "Q"<sup>2</sup> directly to Dawson's apartment. During the drive to Dawson's apartment, conversation in the vehicle involved the need to retrieve the handgun from Dawson. Barginere watched from the front seat of the vehicle as Dawson dropped the handgun down to Nelson-Johnson. Though it was not stated on the record that Barginere knew where Andrews's vehicle would be located, he drove to the Southfield Freeway service drive, where Andrews's vehicle was located. Barginere pulled the vehicle alongside Andrews's vehicle, and remained in

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<sup>2</sup> "Q" is otherwise unnamed in the lower court file. He was present in the vehicle with Barginere on the day of the shooting.

that position until Nelson-Johnson had fired numerous shots at Andrews's group. Barginere drove the vehicle away from the scene after Nelson-Johnson finished firing several shots.

Taking the evidence in the light most favorable to the prosecution, a reasonable jury could have concluded that Barginere intended to aid and abet Nelson-Johnson in attacking Andrews's group. Barginere directly participated in the offenses by driving to retrieve the gun, driving to Andrews's group, and positioning his vehicle so that Nelson-Johnson could shoot at them several times. Considering Nelson-Johnson had just retrieved the gun from Dawson, there was no other reasonable explanation for Barginere's decision to pull alongside Andrews's vehicle besides his clear desire to help Nelson-Johnson shoot at Andrews's group. Further, because Andrews had shot at Barginere and the group of men outside his house earlier in the day, Barginere had a clear motive that explains his desire to help Nelson-Johnson kill Andrews and his group. At the very least, based on the circumstances, Barginere knew that the probable and natural consequence of driving Nelson-Johnson to retrieve a handgun and then pulling alongside Andrews's vehicle was that Nelson-Johnson would shoot at Andrews's group.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Kurtis T. Wilder

/s/ Donald S. Owens